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June 14, 2021

Via ECF

The Hon. Katharine H. Parker
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *The Gap, Inc. v. Ponte Gadea New York LLC*
Case No. 1:20-cv-4541 (LTS) (KHP)

Dear Magistrate Judge Parker:

We represent plaintiff The Gap, Inc. ("Gap") in the above-captioned action. We respectfully submit this letter in response to the June 14, 2021 Supplemental Declaration of Darryl Graham (Dkt. No. 86) (the "Graham Suppl. Decl."). As set forth below, the fees claimed in Mr. Graham's Supplemental Declaration must be reduced substantially:

On May 12, 2021, this Court held a teleconference with the parties in which counsel for Ponte Gadea contended the facts were virtually undisputed, and the Court set a couple (or fewer) hours for what the Court made clear would be an oral argument about two briefs.

Nevertheless, just as Ponte Gadea's counsel failed to calibrate its preparation for the oral argument before the Judicial Panel on Multidistrict Litigation, counsel has once again engaged in unbridled billing before the damages inquest. Beginning the day after the May 12 teleconference, Mr. Graham spent what appears to be the majority of every day thereafter (other than Saturday May 15 and 22) preparing for an hour of argument at the inquest. The numbers of hours are so round and large, and the descriptions so similar and in many cases identical, they can only have been block billed (and likely copied from one day to the next as the descriptions repeat after the weekend respite):

13-May-21	Review inquest papers and cited case law, review exhibits, prepare argument for inquest hearing, various strategy discussions with J. Bernstein.	DRG	6.00
14-May-21	Review inquest papers and cited case law, review exhibits, prepare argument for inquest hearing, various strategy discussions with J. Bernstein.	DRG	7.90



16-May-21	Review inquest papers and cited case law, review exhibits, prepare argument for inquest hearing, various strategy discussions with J. Bernstein.	DRG	5.00
17-May-21	Review inquest papers and cited case law, review exhibits, prepare argument for inquest hearing, various strategy discussions with J. Bernstein.	DRG	7.50

(See Graham Supp. Decl., at 86-87.)

Every one of the eight days (other than Saturday the 22nd) preceding the argument were likewise consumed by block-billed (near) full days described in similarly oblique terms:

<u>Date</u>	<u>Services</u>	<u>Initials</u>	<u>Hours</u>
16-May-21	Review inquest papers and cited case law, review exhibits, prepare argument for inquest hearing, various strategy discussions with J. Bernstein.	DRG	5.00
17-May-21	Review inquest papers and cited case law, review exhibits, prepare argument for inquest hearing, various strategy discussions with J. Bernstein.	DRG	7.50
17-May-21	Continued to prepare for inquest hearing with D. Graham.	JDB	2.10
17-May-21	Review and analyze Gap's inquest papers and the Lease.	KMP	1.50
18-May-21	Review inquest materials and prepare for inquest hearing.	DRG	7.20
18-May-21	Prepare for inquest hearing with D. Graham.	JDB	2.20
18-May-21	Zoom conference with J. Bernstein and D. Graham preparing for inquest hearing.	KMP	0.60
19-May-21	Prepare for inquest hearing.	DRG	7.50
20-May-21	Continue preparing for inquest hearing.	DRG	6.00
21-May-21	Prepare for inquest hearing.	DRG	6.00
21-May-21	Prepare for inquest hearing with D. Graham.	JDB	1.40
21-May-21	Zoom meeting with J. Bernstein and D. Graham preparing for damages inquest hearing.	KMP	1.60
23-May-21	Continue preparing for inquest hearing.	DRG	5.00
24-May-21	Prepare for Inquest hearing.	DRG	8.00



<u>Date</u>	<u>Services</u>	<u>Initials</u>	<u>Hours</u>
16-May-21	Review inquest papers and cited case law, review exhibits, prepare argument for inquest hearing, various strategy discussions with J. Bernstein.	DRG	5.00
17-May-21	Review inquest papers and cited case law, review exhibits, prepare argument for inquest hearing, various strategy discussions with J. Bernstein.	DRG	7.50
17-May-21	Continued to prepare for inquest hearing with D. Graham.	JDB	2.10
17-May-21	Review and analyze Gap's inquest papers and the Lease.	KMP	1.50
18-May-21	Review inquest materials and prepare for inquest hearing.	DRG	7.20
18-May-21	Prepare for inquest hearing with D. Graham.	JDB	2.20
18-May-21	Zoom conference with J. Bernstein and D. Graham preparing for inquest hearing.	KMP	0.60
19-May-21	Prepare for inquest hearing.	DRG	7.50
20-May-21	Continue preparing for inquest hearing.	DRG	6.00
21-May-21	Prepare for inquest hearing.	DRG	6.00
21-May-21	Prepare for inquest hearing with D. Graham.	JDB	1.40
21-May-21	Zoom meeting with J. Bernstein and D. Graham preparing for damages inquest hearing.	KMP	1.60
23-May-21	Continue preparing for inquest hearing.	DRG	5.00
24-May-21	Prepare for Inquest hearing.	DRG	8.00

Id. at 87 (emphasis added).

For his part, Mr. Bernstein billed nearly 19 hours, although he took no part in the oral argument at the inquest. *Id.* at 89.

Counsel's block billing and excess was not limited to the preparation for oral argument. Innumerable entries are billed in one-hour and half-hour increments through March and April. And time is claimed through April for conferences regarding improper Westlaw charges Ponte Gadea agreed to (and did) withdraw.

The records submitted with Mr. Graham's supplemental declaration confirm that counsel's improper and over-billing practices continued unabated, and notwithstanding them being called out in Gap's opposition papers. For the same reasons set forth in the opposition, the amount



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awarded as fees for the period after the original submission should also be cut by more than fifty percent (50%).

We are available to address any questions Your Honor may have regarding the above at the Court's convenience.

Respectfully submitted,

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